

Quicken Loans®

August 23, 2019

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Subject: Quicken Loans Inc.'s Reply Comments on the
Third Further Notice of Proposed Rulemaking, Advanced Methods to Target and
Eliminate Unlawful Robocalls, CG Docket No. 17-59, WC Docket No. 17-97, 84 Fed.
Reg. 29,478**

Dear Ms. Dortch:

Quicken Loans Inc. ("Quicken Loans") supports the financial services Joint Trades' comments¹ on the Federal Communications Commission ("the Commission") Declaratory Ruling and Third Further Notice of Proposed Rulemaking that was released June 7, 2019 ("The 2019 Call Blocking Order")². We thank the Chairman and Commissioners for their leadership in combatting the harmful illegal robocalls epidemic and would like to provide further comments for consideration, including a notice and appeal process for erroneous blocked legitimate business calls.

For background, Quicken Loans is the nation's largest home mortgage lender, and the largest FHA lender. The company closed nearly half a trillion dollars' worth of loans across all 50 states from 2013 through 2018. Quicken Loans moved its headquarters to downtown Detroit in 2010. Now Quicken Loans and the Rock Family of Companies employ more than 17,000 full-time team members in Detroit's urban core. Quicken Loans generates loan production from web centers located in Detroit, Cleveland, and Phoenix, and also operates a centralized loan processing facility in Detroit.

Quicken Loans has been ranked highest in the country for customer satisfaction for primary mortgage origination by J.D. Power for the past nine consecutive years, 2010 – 2018, and also has been ranked highest in the country for customer satisfaction among all mortgage servicers the past five consecutive years, 2014 – 2018, making it the winningest mortgage lender in J.D. Power history. Quicken Loans was once again named to FORTUNE magazine's "100 Best Companies to Work For" list in 2019, and has been included in the magazine's top

¹ *American Bankers Association et. al. July 24, 2019 Comment* at p. 3. Available at <https://www.fcc.gov/ecfs/filing/1072587443209> (hereinafter "Joint Trades Letter").

² *Advanced Methods to Target and Eliminate Unlawful Robocalls*, No. CG17-59, 2019 WL 2461905 (June 7, 2019) (hereinafter "2019 Call Blocking Order").

third of companies named to the list for the past 16 consecutive years. In addition, Essence Magazine named Quicken Loans the “#1 Place to Work in the Country for African Americans.”

Communicating with our clients over the phone is vital to a positive client experience. The 2019 Call Blocking Order addresses two longstanding problems in electronic communications: “unwanted calls,”³ and “spoofing.”⁴ The two problems are related: The first defense against unwanted calls is screening—“Who is calling tells me a lot about whether I want to answer the call. Spoofing turns this defense on its head. The caller ID system lacks good authentication, which means that callers I’d prefer to avoid can masquerade as callers whose calls I normally answer: my neighbor, my child’s school, my employer, or the police. In other words, the authentication gap undermines simple call screening and makes it easy for unwanted callers to get through. Likewise, call blocking is less useful if callers can’t be identified reliably. The analytic systems block all calls from a number, even if the objectionable calls were spoofed and the owner of the number is calling with consent.

The 2019 Call Blocking Order has two parts. First, it encourages providers to block calls by default, and to do so using any “reasonable analytics.”⁵ Second, it encourages the carriers to patch the authentication gap by giving a safe harbor to carriers that block calls based on the SHAKEN/STIR caller ID authentication framework.⁶ Each of these changes will impact callers and call recipients in significant and unpredictable ways.

We join with the Joint Trades in their recommendation that the Commission discourage providers that have not fully implemented SHAKEN/STIR from blocking “unsigned calls.”⁷ However, the authentication gap that will remain until SHAKEN/STIR is fully implemented will not only limit the effectiveness of authentication-based blocking, but also that of existing analytics-based call blocking technology, which the Commission calls to be greatly expanded by encouraging providers to make these the default for consumers. For this reason, we believe that the Commission’s decision to allow carriers to block calls based on analytics, by default, without an error correction process, and before SHAKEN/STIR is implemented, may have unintended consequences, and should be modified.

1. Summary of Comment

In our view, the most pressing concern arising from the ruling’s solutions to the problem of illegal calling relates not to the features of the solutions considered in isolation, but rather to their relationship to one another. Consider:

- The volume of unwanted calls is increasing over time;⁸ and

³ The 2019 Call Blocking Order seems to treat the terms “unwanted call,” “illegal call,” and “robocall,” as synonymous. While we disagree with this approach, we recognize that the terms have similar meanings in some cases. In any case, the problem of unwanted electronic marketing messages has existed since at least 1978. <https://www.templetons.com/brad/spamreact.html> (reviewing reactions to first Spam email message).

⁴ See https://www.schneier.com/blog/archives/2006/03/caller_id_spoof.html (March 2006) (identifying the cause of the problem as a bad authentication system that people have learned to trust and noting that the Commission was investigating).

⁵ 2019 Call Blocking Order ¶ 35.

⁶ *Id.* ¶ 35.

⁷ Joint Trades Letter at p. 3.

⁸ 2019 Call Blocking Order ¶ 8.

- As callers block calls or stop answering them from unfamiliar numbers, illegal callers use spoofing to get through. They begin to spoof numbers from the same area code, and then from a number that's almost the same as the recipient's, and then from the IRS—numbers aren't spoofed at random anymore, they are spoofed strategically and surgically.⁹

Blocking “unwanted” calls by default will have consequences. The immediate consequence is obvious—the call won't go through.¹⁰ Another likely result is that blocked callers will spoof new numbers in order to complete calls. Any calls that won't be blocked will be prime targets for spoofing. Resulting in increased spoofing. The easiest target for opportunistic spoofing will be emergency numbers and Critical Calls.¹¹ As the Commission notes, opt-in rates for call blocking are generally low.¹² Blocking by default will change the calling environment from one in which unwanted calls usually go through (because most consumers don't opt-in to blocking) to one in which most do not. While this is the desired outcome, the result is likely to be more spoofed calls from numbers that are exempt from blocking—not fewer unwanted calls.

If spoofing were difficult or impossible (as we hope it will be after SHAKEN/STIR is implemented), those making unwanted calls couldn't respond by spoofing protected numbers—those calls would be blocked too. Robust authentication like SHAKEN/STIR prevents spoofing, but also increases the effectiveness of existing call blocking technologies.

Unfortunately, the Commission did not counsel patience until this complete solution could be implemented. Without full implementation of SHAKEN/STIR, the massive expansion of call blocking is likely to frustrate good-faith actors, endanger consumers, and increase the worst kinds of spoofing. Moreover, it will create an unjust and unreasonable state of broad and potentially capricious call blocking. Accordingly, we urge the Commission to reconsider its decision to permit call blocking by default. We recommend the Commission direct providers to focus their energy on fully implementing SHAKEN/STIR.

2. Importance of the Sequence of the Commission's Solutions

A. Absent Spoofing Prevention, Expansion of Existing Call Blocking Tools Is Unjust and Unreasonable

We appreciate the Commission's willingness to seek comment on the legal authority to adopt its new rules.¹³ Understanding the complexity and dynamics of the issue, we respectfully do not believe that the 2019 Call Blocking Order, as issued, meets the requirement of Section 201(b) of the Telecommunications Act of 1934 that regulations be “just and reasonable.”¹⁴ The impact of changing from an “opt-in” framework, where less than half of the users have opted-in to one where all users are opted-in by default, will be large and has not been realistically explored.

⁹ *Id.* at ¶ 9.

¹⁰ It also creates a risk that the call was “wanted” and that important information will not be received.

¹¹ *2019 Call Blocking Order* ¶ 36, 63.

¹² *Id.* at ¶ 27.

¹³ *Id.* at ¶ 84-85.

¹⁴ *See* 47 U.S.C. §§ 201(b), 214(a).

The changes urged by the Commission will create a materially different reality for affected parties that requires a fresh “just and reasonable” analysis. For instance, we believe this new reality raises new free speech concerns. As discussed above, inertia will likely keep consumers opted-in to the default regime. Therefore, the methods devised by the providers—guided only by the Commission’s “reasonable analytics” standard—will likely be the rule for determining which calls get through and which do not.

The blocking mechanisms interfere with traditional free speech principles. These principles would be clearly violated by a ban on books based on citizen complaints or opinions, but providers will more than likely incorporate complaints into their call blocking “reasonable analytics.” In fact, many of the analytics will either be based on consumer opinions (e.g., tagging a number as “spam”) or consumer behavior as a proxy for consumer opinions (“low completion rate” or “low average call duration”).¹⁵ In our view, basic principles of due process and free speech are key to the “just and reasonable” analysis. As far back as 1943, our Supreme Court warned about “substitut[ing] the judgment of the community for the judgment of the individual householder” and the importance of “weighing the conflicting interests of the [person who doesn’t want to receive a call] as well as the right of the individual . . . to determine whether he is willing to receive her message.”¹⁶ According to the Court, “Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved.”¹⁷

Applying the same reasoning to the 2019 Call Blocking Order, we believe that encouraging providers to massively expand call blocking will cause overbroad restrictions on speech when the problem could be more reasonably resolved through rules concerning manner of distribution. Moreover, this overbroad application will not only restrict certain legitimate speech, it will also punish and in many cases silence legitimate speakers altogether by depriving owners from use of numbers only because they were the victim of spoofing.

The Court similarly cautioned against overbroad barriers to speech when properly-speech cannot be discerned from legitimate and protected speech.¹⁸ The Court found fatal to a statute the fact that it wasn’t possible to determine whether the consumer of “obscene or indecent” content was a child; we ask the Commission to not encourage speaker-driven speech restrictions when the *speaker* cannot be accurately determined.¹⁹ The Court concluded that *the burden on “speech is unacceptable if less restrictive alternatives would be at least as effective in achieving the legitimate purpose that the statute was enacted to serve.”*²⁰ We agree.

¹⁵ 2019 Call Blocking Order at ¶ 34.

¹⁶ *Martin v. Struthers*, 319 U.S. 141, 144 (1943)

¹⁷ *Id.* at p. 147.

¹⁸ *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997) (holding that a statute aiming to prohibit minors from accessing “obscene or indecent” material on the internet was overbroad because existing mechanisms for enacting such a ban would not be narrowly tailored to block such content only from children, not adults).

¹⁹ *Id.* at p. 846. In fact, not only can the speaker not be determined because of the authentication gap, but it’s also not possible to tell whether a call is wanted or unwanted, or made with consent, or not.

²⁰ *Ibid.* (Emphasis added.)

Similarly, due process embodies our notions of fair play and substantial justice.²¹ And the core of due process is notice and an opportunity to be heard.²² The 2019 Call Blocking Order permits call blocking without notice, and without an opportunity to appeal the decision.

The 2019 Call Blocking Order allows the community to decide who can contact whom, fails to adopt less restrictive alternatives, and denies callers the basics of fairness. This unfairness is magnified while spoofing is possible. Spoofing will adapt to new realities and continue to “get more clever with time, creating new, wickedly deceptive wrinkles to old scams aimed at consumers.”²³ The result will be more spoofing, more unreasonable punishment and unjust deprivation of the victims of spoofing, and a growing legitimacy crises as consumers see more and more legitimate (including Critical Call List) numbers fall victim to spoofing and become sidelined by providers.

Finally, existing economic incentives will not motivate carriers to narrowly tailor blocking analytics or establish harm mitigating procedures such as processes for notice and appeal. Blocked numbers become unusable—even if the blocking is based on the activities of spoofers—and the 2019 Call Blocking Order doesn’t explain how their owner of a blocked number should be billed (or compensated).

Under these circumstances, we respectfully submit that default call blocking is not fair and reasonable.

B. The Purpose of Critical Call Lists Are Thwarted If Spoofing Continues

We agree with the Commission that a Critical Call List can be an important element of an illegal call prevention program.²⁴ We join with the Joint Trades in their request that the proposal expand the categories of critical calls, particularly with respect to their inclusion of mortgage servicing calls, the vital importance of which we know well.²⁵

However, we must again caution of the danger of implementing default call blocking before the foundational issue of spoofing is addressed. Numbers on a Critical Call List can be spoofed, and their privileged position may make them a greater target for spoofing. This would not only thwart the purpose of the Critical Call List, but also potentially result in a legitimacy crisis regarding the very numbers citizens need to trust most.

Keeping the Critical Call List confidential, especially prior to full implementation of SHAKEN/STIR, could slightly delay some of these effects, but so long as the critical call categories can be discovered or presumed, we expect Critical Call List spoolers will figure it out.

3. The Commission Should Make Full Implementation of SHAKEN/STIR Its Primary Focus

Put simply, expanding existing call blocking techniques before SHAKEN/STIR is fully implemented will largely fail to solve the problems it aims to solve and will likely create new

²¹ *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985).

²² *Mullane v. Hanover Bank & Trust*, 339 U.S. 306 (1950).

²³ “Sophisticated Spoofing Tactics Used in Tech Support Scam” <https://www.fcc.gov/sophisticated-spoofing-tactics-used-tech-support-scam>.

²⁴ 2019 Call Blocking Order ¶ 63-70.

²⁵ Joint Trades Letter at pp. 6-7.

ones. Spoofing is at the very heart of the dilemma and preventing spoofing must be central to any truly comprehensive and effective illegal call prevention program.

We therefore urge the Commission to discourage making existing call blocking the default setting before SHAKEN/STIR is fully implemented. Providers' energies are best spent laying the foundation for a comprehensive solution by quickly implementing SHAKEN/STIR. The opt-in status quo with respect to existing call blocking is an interim solution for consumers particularly plagued with illegal calls and avoids problems associated with asking these call blocking techniques to carry more than they can bear.

We appreciate the opportunity to comment and urge the Commission to acknowledge the challenges spoofing poses to legitimate owners of numbers by encouraging providers to develop consistent processes for notice and appeal of blockings. We look forward to continuing discussing and working with the Commission as it takes steps to stop bad actors, calls and texts that harm the consumer and hurt business communications. Should you have further questions, please contact me at garyweingarden@quickenloans.com or 313-373-4554.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'G. Weingarden', with a long horizontal flourish extending to the right.

Gary Weingarden
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